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Constitutional Law - Civil Rights Actions - Federal Court Review of State Statutes - Abstention

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Recent Decisions

CONSTITUTIONAL LAW—CIVIL RIGHTS ACTIONS—FEDERAL COURT REVIEW OF STATE STATUTES—ABSTENTION—The United States Supreme Court has held that the abstention doctrine bars a federal court from entertaining a civil rights action seeking injunctive relief against an ongoing state civil contempt proceeding, allegedly depriving petitioners of due process, where petitioners have an adequate opportunity to present their federal claims in the state proceeding.

Juidice v. Vail, 430 U.S. 327 (1977).

In January, 1974, the Public Loan Company of Poughkeepsie, New York, obtained a default judgment in a New York state court against Harry Vail, Jr., who had breached a loan contract with that company.[1] Three months later, the judgment remained unsatisfied, and Vail was subpoenaed to attend a deposition to be held in May, 1974 to give information concerning his financial affairs.[2] Vail failed to appear for the deposition, and Judge Joseph Juidice of the Dutchess County Court issued an order[3] directing Vail to appear before him in August, 1974 to show cause why he should not be punished for contempt.

On the date scheduled for the hearing, Vail again failed to appear, and Judge Juidice issued a contempt order requiring Vail to pay a fine to the creditor.[4] One month later, the fine had not been paid,

1. The action was filed in the City Court of Poughkeepsie, N.Y., and the default judgment rendered against Vail, a Poughkeepsie resident, was in the amount of $534.36. *Juidice v. Vail*, 430 U.S. 327, 329 (1977).

2. *Id.* The subpoena was issued pursuant to provisions of N.Y. CIV. PRAC. LAW & R. §§ 5223, 5224 by the creditor's attorney. These provisions authorized the creditor's attorney to take an oral deposition of the judgment debtor or compel him to answer written interrogatories, in order to discover assets which could be used to satisfy the judgment.

3. This "show cause" order was authorized by § 757 of the New York Judiciary Law, N.Y. JUD. LAW § 757(1) (McKinney 1975), which also authorized the lower court judge to order the defendant to be arrested and immediately brought before him for the "show cause" hearing. The order did not warn Vail that failure to appear at the hearing could result in fines and/or eventual imprisonment, nor did the statute require such a warning. The text of this statute, and the other relevant sections of the Judiciary Law, is set forth in full in *Vail v. Quinlan*, 406 F. Supp. 951, 953-55 n.2 (S.D.N.Y. 1976), *rev'd sub nom. Juidice v. Vail*, 430 U.S. 327 (1977).

4. The judge is required to impose a fine upon a finding that a person has refused to obey an order of court or subpoena imposed for the benefit of another party to the suit. N.Y. JUD.

and the creditor obtained an ex parte commitment order for Vail's arrest and confinement.[5]

Vail was released the day after his arrest[6] upon payment of the fine and costs.[7] Subsequently, he and several other similarly situated judgment debtors brought a class action[8] in the United States District Court for the Southern District of New York under the Civil Rights Act of 1871, "section 1983,"[9] seeking to enjoin the continued use of the contempt provisions of the New York Judiciary Law.[10]

LAW § 770 (McKinney 1975). This is the classic form of punishment for civil, as opposed to criminal, contempt. Criminal contempts are acts done in disrespect of the court or its process, punishable by fines or imprisonment. Civil contempts are failures to obey orders of a court imposed for the benefit or advantage of another party to the proceeding. As it is an offense against that party and not against the dignity of the court, a civil contempt is normally punishable by fine, imposed for the indemnity of the aggrieved party. BLACK'S LAW DICTIONARY 390 (rev. 4th ed. 1968). The section of the statute under which Judge Juidice imposed his contempt order should not be confused with a separate provision which authorized the judge to order imprisonment if the creditor filed an affidavit within 30 days of the civil contempt order, stating the fine was still unsatisfied. *See* N.Y. JUD. LAW § 756 (McKinney 1975) and text accompanying note 5 *infra*.

5. This procedure was expressly authorized. N.Y. JUD. LAW § 756 (McKinney 1975). Its operation more closely resembles criminal contempt, since the judge is permitted to issue an arrest warrant and imprison the offender upon his failure to pay. Vail was first held in civil contempt and fined. Upon failure to pay that fine, he was ordered imprisoned, a punishment usually associated with criminal contempt. *See* note 4 and accompanying text *supra*.

6. 406 F. Supp. at 957. At the time of his arrest, Vail and his family were on public assistance and had only $1.00 to live on until his next welfare check. He and his family owned no property except household furniture and clothing. *Id.*

7. Vail was released when a relative paid the fine of $270.00 plus costs. The fine was advanced to the creditor as partial satisfaction of the debt. 430 U.S. at 329 n.4.

8. Certification of the class, consisting of all persons who had been or were at the time subject to civil contempt proceedings under the New York Judiciary Law, was made by District Court Judge McMahon at the outset of the litigation. 406 F. Supp. at 953 n.1.

9. The statute, originally enacted by Congress as the Civil Rights Act of 1871, ch. 22, § 1, 17 Stat. 13, provides:

> Every person who, under color of any statute . . . of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983 (1970) [hereinafter referred to as section 1983 or Civil Rights Act].

10. Vail and his co-plaintiffs contended that the New York procedures deprived them of procedural due process under the fourteenth amendment to the United States Constitution because no notice of the possibility of incarceration was provided the debtor in the show cause order, because the procedures did not require a hearing with the debtor present prior to a finding of contempt and incarceration, and because the procedures did not provide for the right to counsel. 430 U.S. at 340 n.3 (Stevens, J., concurring). Section 1 of the fourteenth amendment, enacted in 1868, [hereinafter cited as due process clause] reads:

> All persons born or naturalized in the United States, and subject to the jurisdiction

The plaintiffs also sought damages against the individual government-employee defendants.[11] The three-judge district court,[12] convened to consider the case, held that certain provisions of New York's civil contempt statutes violated the due process clause and enjoined their enforcement.[13]

The case was appealed[14] by the defendant judges; the Supreme Court reversed without reaching the merits of the section 1983 claim, deciding that the lower court should not have heard the case. After dismissing the complaint as to all but two of the plaintiffs for lack of standing,[15] the Court held that the doctrine of abstention

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thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1. At no point in the state proceedings had Vail appeared to contest the action on the merits or raise these constitutional issues. 430 U.S. at 330.

11. 406 F. Supp. at 953. Judges Juidice and Aldrich of the Dutchess County Court and Sheriff Quinlan, the arresting officer, were named as party defendants. The lower court held that the doctrine of judicial immunity barred recovery against the judges and also dismissed the damage claims against Quinlan due to the lack of any allegations of malice or bad faith on his part. 406 F. Supp. at 956 n.3. (citing Pierson v. Ray, 386 U.S. 547 (1967)). For a discussion of the requirements of a successful damage action under § 1983, see Comment, *Section 1983 and The New Supreme Court: Cutting the Civil Rights Act Down to Size*, 15 DUQ. L. REV. 49, 64-67 (1976) [hereinafter cited as *The New Supreme Court*].

12. At the time this action was filed, three-judge federal district courts were required by statute to hear any action to enjoin a state statute on grounds that it violated the United States Constitution. 28 U.S.C. § 2281 (1970)(repealed 1976). In 1976, Congress abrogated this provision by the Act of August 12, 1976, Pub. L. 94-381, § 1, 90 Stat. 1119, expressly making the repeal prospective in operation. *Id.* § 7. Congress also amended 28 U.S.C. § 2284 (1970), which had mandated three-judge federal courts to hear challenges to federal statutes. This provision now requires that three-judge courts also hear challenges to state apportionment of congressional and statewide legislative districts. Act of August 12, 1976, Pub. L. 94-381, § 4, 90 Stat. 1119 (amending 28 U.S.C. § 2284 (1970)).

13. The district court struck down N.Y. JUD. LAW §§ 756, 757, 770, 772, 773, 774, & 775 (McKinney 1975)(concerning activities giving rise to contempt), leaving four provisions, N.Y. JUD. LAW §§ 765, 767, 769, & 771 (McKinney 1975)(governing activities of sheriffs and prescribing certain discovery procedures) unaffected by its order. 406 F. Supp. at 955-56.

14. Direct appeal to the United States Supreme Court from any order of a three-judge district court is a matter of right. 28 U.S.C. § 1253 (1970).

15. Plaintiffs Patrick Ward and Joseph Rabasco were the only two parties the Court found to have standing or an active, justiciable "case or controversy" under Article III of the Constitution. At the time the complaint was filed in the district court, all the plaintiffs, except Ward and Rabasco, had already been imprisoned, paid their court-imposed fines, and had been released. Ward *had not* been imprisoned, but alleged that he was in imminent danger of a contempt order. Rabasco *had* been imprisoned and paid his fine, but, like Vail and several others, the fine had been insufficient to meet the amount of the judgment against him in the state court proceeding. Of those who paid the fine, the Court found that only

enunciated in *Younger v. Harris*[16] and elaborated in *Huffman v. Pursue, Ltd.*[17] barred a federal court from intervening in an ongoing state civil contempt proceeding where the plaintiff had an opportunity to make the substance of his alleged section 1983 claim in the state court.[18]

The *Younger* abstention doctrine required a federal court to dismiss absolutely a case when a state criminal proceeding involving the same parties or issues was pending.[19] *Huffman* expanded the doctrine by applying it to cases where the pending state action was a civil nuisance proceeding.[20] The district court had applied the *Younger-Huffman* language literally and determined that, because *Juidice* involved neither type of proceeding, abstention was not required.[21]

Rejecting an analysis based solely on the nature of the proceeding to be enjoined, Justice Rehnquist, speaking for the majority, instead focused on the underlying policy foundation for the abstention doctrine: the notions of federalism and comity inherent in the American scheme of governmental powers.[22] Federalism is the belief in mu-

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Rabasco had standing, since he alone had alleged the threat of future contempt orders and imprisonment. 430 U.S. at 332-33.

16. 401 U.S. 37 (1971) (federal court forbidden to enjoin a pending state criminal prosecution).

17. 420 U.S. 592 (1975) (federal court must abstain from interfering with ongoing state civil nuisance proceedings).

18. 430 U.S. at 333-35. Justice Rehnquist wrote the opinion for the majority, joined by Justices Powell, Blackmun, White and Chief Justice Burger. Justice Stevens concurred in the judgment. Justices Brennan, Marshall and Stewart dissented.

19. The Court's holding in *Younger*, that a federal court must abstain when there is an ongoing criminal proceeding, was qualified by three exceptions: when the federal plaintiff could show "great and immediate" irreparable harm to a federal constitutional right, 401 U.S. at 46; when the statute upon which the prosecution is based was shown to be flagrantly and patently violative of an express constitutional provision, *id.* at 53; or when there was evidence that the prosecution was brought in bad faith or with an intention to harass, *id.* at 54.

20. In *Huffman*, a successor to the leasehold interest of a theater, closed for displaying pornographic films by a decree in a state court proceeding under an Ohio public nuisance statute, brought a successful § 1983 action in federal district court, enjoining enforcement of the Ohio decree insofar as it closed the theater to films not having been judged obscene in a prior adversary proceeding. 420 U.S. at 598-99. Since the state was a party to the state proceeding, and the proceeding was said to be "in aid of and closely related to" criminal statutes prohibiting the dissemination of obscene materials, the Court held that the federal court should have abstained, calling the nuisance proceedings "more akin" to criminal prosecutions. *Id.* at 604.

21. 406 F. Supp. at 957-59.

22. 430 U.S. 334. Justice Rehnquist quoted Justice Black's language from *Younger* which defined the terms federalism and comity synonymously as:

tually strong, independent federal and state governments, and comity involves a recognition that state courts are as competent as federal courts to adjudicate federal constitutional claims, manifested by federal non-intervention in pending state proceedings.[23] The Court found that a state has a vital interest in its contempt process, an interest which would be infringed upon by federal intervention.[24] The majority thus held that the *Younger* abstention doctrine was applicable to cases where the pending state action between private individuals results in civil contempt proceedings.[25]

A state's interest in its contempt proceedings, the Court conceded, was not as great as its interests in the enforcement of its criminal laws or the maintenance of quasi-criminal proceedings.[26] Nevertheless, in the majority's view, whether contempt proceedings were labeled civil, criminal, or quasi-criminal, interference with them was an offense to the state every bit as great as intervention

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> a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.

401 U.S. at 44. Early Supreme Court decisions indicated that the doctrine of comity was based on the respect state and federal sovereignties owed one another in cases involving concurrent jurisdiction; deference was to be given to the court first invoked. The doctrine was modified in 1875 when Congress passed the statute conferring general jurisdiction to the federal courts in all cases involving a constitutional question. 28 U.S.C. § 1331 (1970). Subsequently, the trend was to uphold federal court intervention, producing widespread public antagonism in the states. *See* Warren, *Federal and State Court Interference*, 43 HARV. L. REV. 345, 359-66 (1930) [hereinafter cited as Warren]. In the mid-1920's, the Supreme Court began restricting the federal courts' power to interfere with ongoing state proceedings. *See, e.g.*, Fenner v. Boykin, 271 U.S. 240 (1926) (extraordinary circumstances required to justify federal injunctive relief against state criminal prosecutions). Since that time, the "proper respect" underlying comity has come to be associated most often with the concept of federal non-intervention in state proceedings. Warren, *supra* at 359-66.

23. 430 U.S. at 334.

24. *Id. See also* text accompanying notes 28-29 *infra*.

25. 430 U.S. at 335. The Court thus applied abstention, for the first time, in a non-criminal or quasi-criminal setting, extending *Younger* and *Huffman* beyond the narrow factual confines of those cases. *See* notes 16, 17, 19, & 20 and accompanying text *supra*. The majority also pointed out that the abstention doctrine is wholly independent of the federal anti-injunction act which bars federal courts from interfering with pending state proceedings. 430 U.S. at 335 n.11. The anti-injunction law provides: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283 (1970). In Mitchum v. Foster, 407 U.S. 225 (1972), § 1983 actions for injunctive relief were held to come within the above exception for actions "expressly authorized" by Act of Congress. *See* notes 40 & 77 and accompanying text *infra*.

26. 430 U.S. at 335.

in a criminal prosecution,[27] as the Court viewed the contempt power as the heart of effective enforcement of the state's judicial system.[28] Additionally, failing to abstain in cases challenging state contempt actions might negatively reflect upon the state court's competence to enforce federal constitutional rights, a classic concern of federalism.[29] The Court, however, refused to consider the applicability of *Younger* abstention to all civil litigation.[30]

The Court distinguished the decision in *Gerstein v. Pugh,*[31] upon which the district court had primarily relied. The majority reasoned that in *Gerstein,* the federal plaintiffs had sought to enjoin an unconstitutional pre-trial detention, the legality of which *could not* be raised as a defense in the underlying state criminal prosecution.[32] The injunction sought in *Juidice,* however, consisted of a challenge the Court felt *could* be made in the state contempt proceeding.[33] Allowing federal intervention on the authority of *Gerstein,* therefore, would be unwarranted.

Although Justice Stevens concurred in the judgment, he disagreed with the majority on the application of *Younger* abstention to the facts of *Juidice.*[34] He argued that the exception recognized in *Younger,* allowing a federal court to intervene whenever the federal

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27. *Id.* at 335-36. Justice Rehnquist observed that, while contempt procedures do help secure the private interests of competing parties to lawsuits, they also bolster the authority of the judicial system, "so that its orders and judgments are not rendered nugatory." *Id.* at 336 n.12.

28. *Id.* at 336.

29. *Id. See also* note 22 and accompanying text *supra.*

30. 430 U.S. at 336 n.13. *See* note 65 and accompanying text *infra.*

31. 420 U.S. 103 (1975). In *Gerstein,* several Florida prisoners brought a class action under § 1983 to enjoin state statutory procedures whereby a person could be detained for trial following his arrest without a hearing to contest the issue of probable cause. On the abstention issue, the Court ruled that since the legality of the pre-trial detention could not be raised as a defense to the prosecution itself, the injunction was not directed to the prosecution as such, but at the pre-trial detention, and thus *Younger* was inapplicable. *Id.* at 108 n.9.

32. 430 U.S. at 336-37.

33. *Id.* at 337 n.14. The Court felt that the debtor-plaintiffs could have presented their federal claims at the hearing on the order to show cause. *See* text accompanying note 3 *supra.* The Court stated that even had the contempt order issued, a motion to vacate it or stay the state proceedings and, ultimately, review as of right in the Supreme Court were available. 430 U.S. at 337 n.14.

34. 430 U.S. at 339. Justice Stevens did not express his views on the majority's extension of *Younger* abstention to the type of civil proceedings presented in *Juidice,* and it is not exactly clear from his opinion that he necessarily disagreed with this aspect of the case. His discussion of the inappropriateness of *Younger* abstention in *Juidice* was based on his feeling that one of the *Younger* exceptions was applicable. He thus implicitly approved of the majority's rejection of an analysis based solely on the type of proceeding involved.

plaintiff has suffered or risks great and immediate irreparable harm to a federal constitutional right, was applicable.[35] Since the plaintiff would suffer irreparable harm if his allegations of due process infirmities in the statute proved constitutionally sound, the Court, Stevens said, had an obligation to reach the merits of the case.[36] He concluded, however, that the New York procedures provided the judgment debtors with adequate notice and an opportunity to be heard,[37] and therefore denied section 1983 relief.

The first dissent, written by Justice Brennan and joined by Jus-

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35. *Id.* at 340 n.3. Justice Stevens reasoned that if, as plaintiffs claimed, they had a constitutional right to a hearing before incarceration, and the New York procedures presented the possibility that one could be imprisoned without having been given an opportunity for such a hearing, the harm complained of (incarceration) could occur before the constitutionally required hearing, and thus the *Younger* exception was appropriate. His analysis closely resembled that advanced by the Court in Gerstein v. Pugh, 420 U.S. 103 (1975). *See* note 31 and accompanying text *supra*. His conclusion was bottomed on his view that the basic premise underlying *Younger* was that a federal court may act when the plaintiff has an inadequate remedy at law. 430 U.S. at 339. Since the *Younger* exception required a showing of "great and immediate" irreparable harm, Justice Stevens may appear to have understated the prerequisite necessary to invoke this exception to abstention. Implicit in his opinion, however, was the inclusion of a requirement of an imminent injury to a federal constitutional right (not irreparable harm or an inadequate remedy at law in the normal equity sense of the words) in that he refers to the "alleged federal wrong." *Id.* at 341. Justice Black in *Younger* explained it as follows:

> In all of these cases the Court stressed the importance of showing irreparable injury, the traditional prerequisite to obtaining an injunction. In addition, however, the Court also made clear that in view of the fundamental policy against federal interference with state criminal prosecutions, even irreparable injury is insufficient unless it is "both great and immediate." . . . Certain types of injury, in particular, the cost, anxiety, and inconvenience of having to defend against a single criminal prosecution, could not by themselves be considered "irreparable" in the special legal sense of that term. Instead, the threat to the plaintiff's federally protected rights must be one that cannot be eliminated by his defense against a single criminal prosecution.

401 U.S. at 46 (citations omitted). The *Younger* Court also classified threats and harassment by law enforcement officials as constituting a type of irreparable harm in the sense envisioned above. *Id.* at 47-48. *Cf.* Dombrowski v. Pfister, 380 U.S. 479 (1965) (federal injunctive relief permissible when federal plaintiff alleged threats to prosecute under a statute allegedly overly broad on first amendment grounds).

36. 430 U.S. at 341. Justice Stevens further supported his decision to reach the merits by observing that, to decide whether or not to abstain in the face of a due process claim, the district court would first have to examine the statutes to see whether a constitutional challenge could have been made. In effect, the court would resolve the case on the merits before a decision was made to hear it: obviously an improper, backwards approach to constitutional adjudication. *Id.* at 341 n.4.

37. *Id.* at 341. Justice Stevens found the New York procedures provided for adequate notice and opportunities to be heard and furthermore, that the right to counsel was not denied because proof of indigency, a prerequisite to obtaining free counsel, would provide a defense to the contempt charge.

tice Marshall,[38] lashed out at what was termed another step in the process of "eviscerating"[39] section 1983. Justice Brennan devoted his entire opinion to an attack on the majority's decision to abstain—emphasizing that Congress intended the federal judiciary to play the major role in adjudicating section 1983 claims—and never specifically addressed the merits of the constitutional challenge.[40]

Justice Stewart also dissented,[41] but on the grounds that the Court had invoked an improper form of abstention. Since he felt that the New York civil contempt procedures presented interpretation problems, Stewart opted for the type of abstention first enunciated in *Railroad Commission v. Pullman Co.*,[42] which allows the federal court to retain jurisdiction while obtaining a clarification of state law from the state courts. Merely staying the federal action, he believed, would serve the dual goals of minimizing interference with state court proceedings while preserving the plaintiff's right to a federal forum.[43] Moreover, Justice Stewart pointed out that the

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38. *Id.* (Brennan, J., dissenting).

39. *Id.* at 346.

40. Reviewing the legislative history of § 1983, Justice Brennan first argued that the congressional purpose in passing the Civil Rights Act was to create a supplementary federal remedy for individuals deprived of rights secured under the Constitution. That purpose would be unjustifiably frustrated by requiring a § 1983 plaintiff to pursue his federal claims in pending state proceedings involving private litigants and no strong state interest. *Id.* at 342. His second argument was that the Court's extension of *Younger* abstention into the area of civil litigation further erodes the Court's holding in Mitchum v. Foster, 407 U.S. 225 (1972), that § 1983 actions for injunctive relief come within the "expressly authorized" exception in the federal anti-injunction act. *See* note 25 *supra.* Continued extensions of judicial abstention have the effect of barring §1983 actions, just as the statute otherwise would, were it not for *Mitchum.* Finally, Justice Brennan noted that extensions of abstention do not promote federalism, but damage it, because the role federal courts play in vindicating rights common to all citizens of all the states is an important part of federalism, a point neglected in the majority's opinion. 430 U.S. at 346-47.

41. 430 U.S. at 347.

42. 312 U.S. 496 (1941). In *Pullman,* the Texas Railroad Commission had issued an order requiring a conductor to be in charge of all railroad sleeping cars. On some of its runs in Texas, the Pullman Company had only one sleeping car, under the charge of porters, all of whom were black. The Pullman Company sued in federal court to enjoin the order, alleging that it violated the due process and equal protection clauses of the fourteenth amendment. The Supreme Court reversed the lower court's grant of injunctive relief. The question of whether the commission actually had the power to issue the order had not been addressed by the state courts. If resolved against the commission, this would have obviated the necessity of the plaintiff's constitutional challenges. The Court ruled, therefore, that the lower court should have abstained and remitted the parties to the state courts of Texas, retaining jurisdiction to hear the constitutional claims, if necessary, after the relevant state statutes were construed. *Id.* at 501.

43. This is the distinction between *Pullman* abstention and *Younger: Younger* mandates

Court had traditionally preferred to invoke *Pullman* rather than *Younger* abstention when grounds for the former were clear.[44]

The dramatic rise since the early 1960's of the section 1983 remedy from relative obscurity to prominence resulted in a deluge of civil rights actions in the federal courts[45] and helped trigger the Burger Court's somewhat understandable concern over the federal caseload.[46] In *Juidice,* however, the most recent illustration of the Court's eagerness to cut back on the caseload[47] through the use of the abstention doctrine, the Court unfortunately exhibited several serious deficiencies in reasoning.

Assuming arguendo that *Younger* abstention is appropriate for civil contempt proceedings, the *Juidice* Court misapplied the exception developed in *Younger* which sanctions federal intervention when the plaintiff faces great and immediate irreparable harm.[48] The plaintiffs in *Juidice* argued that due process entitled them to a hearing before incarceration. They alleged that defects in the notice provisions of the New York statutes prevented them from having an opportunity to raise this issue, however, before the harm they complained of was suffered.[49] Justice Stevens accurately observed that

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the dismissal of the plaintiff's federal action, while *Pullman* only requires its temporary suspension. 430 U.S. at 348.

44. *Id.* at 348, *citing* Carey v. Sugar, 425 U.S. 73 (1976), as the most recent pronouncement of the vitality of *Pullman* abstention. In *Carey,* plaintiffs brought a § 1983 action to enjoin enforcement of New York's prejudgment attachment procedure whereby a state court plaintiff could attach, prior to judgment and after proving proper security, debts owed the defendant by third parties. The lower court had granted relief, but on appeal the Supreme Court vacated and remanded to the lower court with instructions to abstain from a decision on the federal constitutional issues until the parties had an opportunity to obtain a construction of the New York law from New York courts. 425 U.S. at 78.

45. *See The New Supreme Court, supra* note 11, at 49-51 (discussing the effects of the increase in § 1983 actions on the federal system).

46. *See* Aldisert, *Judicial Expansion of Federal Jurisdiction: A Federal Judge's Thoughts on Section 1983, Comity and the Federal Caseload,* 1973 LAW & SOC. ORD. (ARIZ. ST. L.J.) 557, 559-63 [hereinafter cited as Aldisert]. Judge Aldisert is a circuit judge on the United States Court of Appeals for the Third Circuit.

47. Another primary reason suggested for the Court's present perspective on § 1983, apart from its concern over the caseload, is to increase respect for the Constitution, which the Court views as being abused when invoked every time a conceivable liberty or property interest has allegedly been damaged by a representative of the state. *See The New Supreme Court, supra* note 11, at 91. The Court likewise has a legitimate concern, when called upon to reconcile clashes between sovereignties, in maintaining a healthy balance between respect for state courts' ability to adjudicate constitutional claims and the federal court role, assigned to it by Congress, of vindicating rights arising under the federal constitution.

48. *See* notes 19 & 35 and accompanying text *supra.*

49. *See* notes 10 & 35 and accompanying text *supra.*

the state "remedies" of appeal and collateral attack, which the majority viewed as adequate,[50] could not suffice.[51] The Court's distinction of *Gerstein v. Pugh* is also difficult to accept,[52] given the analagous factual situations: the injunction in *Juidice* was directed at the constitutional issue of a hearing before incarceration, which, similar to *Gerstein,* could not be raised on the merits in the contempt proceeding.

The more significant flaw in the Court's reasoning, however, concerns the basic issue of whether *Younger* abstention should have been extended to section 1983 claims seeking to enjoin state civil contempt proceedings. Incredibly, but perhaps symbolically, the Court never acknowledged the unavoidable conflict between section 1983 and federalism, the notion underlying the abstention doctrine. The purpose of the Civil Rights Act of 1871 was to interpose federal courts between the states and individuals whose rights were allegedly violated by those states,[53] and friction between the federal government and the states is thus both inevitable[54] and necessary. When state officials, under color of state law, act to deprive persons of their fundamental federal rights, federal action is necessary if the congressional purpose is to be fulfilled. By expanding the scope of the abstention doctrine[55] in *Juidice,* however, the Court placed a premium on the importance of state's rights[56] while all but ignoring the likewise compelling case for preserving individual remedies aris-

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50. 430 U.S. at 340 n.3. *See also* notes 34-36 and accompanying text *supra.*

51. 430 U.S. at 340-41.

52. *See* notes 31-33 and accompanying text *supra.*

53. 430 U.S. at 339-40 n.2 (Stevens, J., concurring). *See also* note 35 and accompanying text *supra.*

54. For a review of various classic confrontations between federal and state courts, see Warren, *supra* note 22, at 347-66.

55. Some judicial and statutory checks on the flood of § 1983 litigation in the federal courts are necessary both on practical and constitutional grounds, since much of the litigation involves trivial constitutional deprivations. *See* Aldisert, *supra* note 46, at 569-71.

56. Justice Black, writing for the majority in *Younger,* even conceded that federalism includes not only the concept of states' rights, but also necessary federal intervention at times. He noted that the concept:

> does not mean *blind deference to "States' Rights"* any more than it means centralization of control over every important issue in our National Government and its courts. The Framers rejected both these courses. What the concept does represent is a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States.

401 U.S. at 44 (emphasis added).

ing under the Civil Rights Act.[57]

Furthermore, the decision is an unwarranted extension of the abstention doctrine in an area where the importance of the state interest is seriously challenged, if not completely overridden, by the individual's interest in securing his federal rights in a federal forum. "Notions of comity and federalism" can hardly justify such a rule of law. Prior to this extension of *Younger* abstention, state interests were more than adequately protected and thus comity was sufficiently furthered. First, *Younger* mandated abstention in the face of pending state criminal prosecutions and the propriety of this rule has never been seriously disputed.[58] Undeniably, the state has an interest in the prosecution of crimes against it. Furthermore, even in the absence of an extension of *Younger*, federal courts could exercise *Pullman* abstention, remitting the questions of ambiguous state law to the state courts for possible limiting constructions, where appropriate.[59] Finally, the federal anti-injunction act[60] was, and still is, generally applicable to all other federal equity and damage actions. States' rights, far from being threatened prior to

57. Prior to the War Between the States, Congress relied on the state courts to vindicate essential rights arising under the Constitution and federal laws, with review as of right in the Supreme Court from decisions denying constitutional challenges to state laws being the only exception. After the Civil War, however, with the passage of the thirteenth, fourteenth and fifteenth amendments, and the Civil Rights Act of 1871, nationalism dominated political thought. Zwickler v. Koota, 389 U.S. 241, 245-46 (1967). Congress' investiture of general federal question jurisdiction in the federal courts in 1875 also was significant in expanding federal power. Thereafter, the federal courts "ceased to be restricted tribunals of fair dealings between citizens of different states, and became the *primary* and powerful reliances for vindicating every right given by the constitution, the laws, and treaties of the U.S." *Id.* at 247 (emphasis in original). *Cf.* Steffel v. Thompson, 415 U.S. 452, 472-73 (1974)(emphasizing that Congress had assigned the federal courts a major responsibility in protecting federal rights).

58. Justice Douglas was the lone dissenter in *Younger*. 401 U.S. at 58. *See also* Juidice v. Vail, 430 U.S. 327, 345. (1977) (Brennan, J., dissenting) (recognizing the paramount state interest in the prosecution of crimes).

59. The *Juidice* majority did not consider *Pullman* applicable. This seems to be the better view, despite Justice Stewart's ideas to the contrary. The rule has been reiterated since *Pullman* that "if the state statute in question, although never interpreted by a state tribunal, is not fairly subject to an interpretation which will render unnecessary or substantially modify the federal constitutional question, it is the duty of the federal court to exercise its properly invoked jurisdiction." Harman v. Forssenius, 380 U.S. 528, 534-35 (1965) (§ 1983 action to enjoin Virginia poll tax statute upheld). The statutes in *Juidice* do not seem to present the ambiguity necessary and do not seem fairly subject to an interpretation which would render the constitutional question moot.

60. 28 U.S.C. § 2283 (1970). *See* notes 25 & 40 *supra*.

Juidice, were enjoying a robust vitality that will doubtless last indefinitely.

Lower federal courts are likely to assume that abstention with respect to all pending state court proceedings has become mandatory as a result of *Juidice,*[61] with discretion existing only to the extent of the three exceptions enumerated in *Younger.*[62] Allowing a federal court faced with pending state civil proceedings broader discretion to abstain would enable it to weigh all relevant factors; such a balancing of interests is implicit in the concept of federalism itself. These factors might include the significance of the state interest involved (which would vary depending on the type of civil proceeding in question), the gravity of harm alleged by the plaintiff, and the likelihood of serving or detracting from the notion of federalism.[63] At the same time, necessary limits could be easily placed on that discretion.[64]

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61. Justice Rehnquist noted in *Juidice* that the express exceptions to abstention enunciated in *Younger* have survived *Juidice,* since *Juidice* represented an extension of *Younger* to other proceedings. 430 U.S. at 338. If a federal plaintiff can show that pending state proceedings, civil or criminal, have been brought in bad faith, or with an intention to harass, or under statutes clearly and palpably unconstitutional, the federal court need not abstain. *See* note 19 and accompanying text *supra.* These exceptions, however, do not vest much discretion in the federal judge, since the general rule is that abstention must be invoked absent one of the extremely rigid and narrow exceptions.

62. *See* note 19 and accompanying text, & note 61 *supra.*

63. Justice Brennan stated incisively in *Juidice* that it may indeed be counter to the state interest if the question of resolving the constitutionality of state statutes in litigation in the state courts is placed in private parties. He pointed out:

> If the State may not be heard in the state civil case, defense of the constitutionality of its statute would be solely in the hands of a party having neither the State's resources, expertise, nor governmental interest in sustaining the validity of the statute. A dilemma would be posed even for officials of a State, like New York, having procedures that permit .,. . and in some cases require . . . state intervention in suits raising constitutional challenges to state statutes. They must choose whether to intervene in countless private lawsuits brought all over the State implicating the constitutionality of state statutes, or not to intervene and risk adverse decisions having effects far beyond the interests of the particular private parties. By contrast, a § 1983 suit in federal court necessarily names the State or its officials as defendants, and the litigation focuses squarely on the issue of the validity of the statute, with the State defending its own interest directly.

430 U.S. at 345-46.

64. For example, federal court intervention could be made mandatory when a state civil proceeding is in progress and there exists, by analogy to the exceptions in *Younger,* either a danger of great and irreparable harm to the federal plaintiff, the presence of a statute expressly violative of constitutional provisions, or evidence that the case was brought in bad faith. Where none of these factors is present, the trial judge could be given discretion to determine the question, with his decision being unreviewable save for manifest abuse of discretion. This, perhaps, would work the necessary cut-back on the federal caseload, which

Applying this balancing test to the facts in *Juidice*, abstention was improper. The state's interest in its contempt process certainly does not override an individual's right to avoid imprisonment without due process of law. Whether or not the New York procedures in fact violated the petitioners' due process rights should have been addressed on the merits in a federal forum.

The Court's decision in *Juidice*, standing alone, may not appear to significantly affect the ability of an individual to assert federal constitutional rights in a federal forum. Yet despite the Court's caveat that *Younger* would not thereafter be necessarily applicable to all civil litigation,[65] the opinion leaves little doubt that the Court is only waiting for the proper case to make this pronouncement.[66] The majority's finding of a state interest in the civil contempt process,[67] a contest between private litigants in which the state is not a party, makes it difficult to imagine how the Court could now fail to find a state interest in *any* state civil proceeding.[68]

When combined with the Court's other decisions on section 1983 actions,[69] *Juidice* represents yet another powerful barrier to a poten-

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is the Burger Court's major concern. For an analagous proposal concerning *Pullman* abstention, see Wright, *The Abstention Doctrine Reconsidered*, 37 TEX. L. REV. 815, 824-27 (1959). *See also* text accompanying note 63 *supra*.

65. 430 U.S. 336 n.13. *See also* text accompanying note 26 *supra*.

66. At the outset of its analysis of *Younger*, the *Juidice* Court stated, "We now hold, however, that the principles of *Younger* and *Huffman* are not confined solely to the types of state actions which were sought to be enjoined in those cases." 430 U.S. at 334. This represents the first instance where the Court, in developing abstention, explicitly stated that the presence of a criminal or quasi-criminal proceeding is not a prerequisite. In addition, the Court, in setting forth the necessary forum which must be available to the federal plaintiff in the state proceeding, stated, "Here it is abundantly clear that appellees had an *opportunity* to present their federal claims in the state proceeding. No more is required to invoke *Younger* abstention." *Id.* at 337 (emphasis in original). Finally, the Court reiterated that a key factor in federal court interference is that it reflects negatively on the state courts' ability to enforce constitutional principles. *Id.* at 336. By its focus on the respect to be accorded courts of a state, the Court seems to have implicitly disregarded any concern with the type of proceeding involved.

67. *Id.* at 335. *See also* text accompanying notes 24 & 29 *supra*.

68. Justice Brennan observed that the Court's focus on the state contempt power was only a cover "for the ultimate goal of denying § 1983 plaintiffs the federal forum in any case, civil or criminal, when a pending state proceeding may hear the federal plaintiff's federal claims." 430 U.S. at 344-45 (footnote omitted). Clearly, a state interest exists in civil litigation involving private parties—offering its citizens their day in court to vindicate private remedies. Whether such an interest should ever be viewed as significant enough to override a U.S. citizen's right to a federal forum to hear constitutional claims is another question. *See* notes 40 & 57 and accompanying text *supra*.

69. *See, e.g.*, Rizzo v. Goode, 423 U.S. 362 (1976) (injunction issued in § 1983 class action alleging pervasive pattern of police mistreatment held an unwarranted federal instrusion);

tial civil rights litigant. Section 1983 plaintiffs may now be forced to present substantial constitutional claims in pending state proceedings, where the judges generally are less experienced at handling constitutional claims and obligated, by the separation of powers doctrine, unlike federal judges reviewing state statutes, to give maximum deference to state statutes.[70] The decision thus effectively foreshadows the elimination of a section 1983 cause of action in the face of any pending state proceeding, and renders the decision in *Mitchum v. Foster*,[71] where section 1983 claims were held to be excepted from the federal anti-injunction act, of little future vitality.

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Paul v. Davis, 424 U.S. 693 (1976) § 1983 damage action alleging defamation by local police failed to state a cause of action); O'Shea v. Littleton, 422 U.S. 490 (1975) (request for § 1983 injunctive relief alleging past acts of racial discrimination held not to constitute an existing case or controversy); Hicks v. Miranda, 422 U.S. 322 (1975) (lower court should abstain when state criminal prosecution is begun after the federal complaint but before any proceedings on the merits); Stone v. Powell, 428 U.S. 465, (1976) (federal habeas relief not mandated if state prisoner had full opportunity to litigate fourth amendment claim in the state prosecution). For an excellent discussion of the effect of these decisions on the potential § 1983 litigant, see *The New Supreme Court, supra* note 11, at 91-95.

70. The potential inadequacy of local courts was illuminated by Justice Douglas, dissenting in Harrison v. N.A.A.C.P., 360 U.S. 167, 179 (1959). The majority in *Harrison* held that the *Pullman* abstention doctrine barred a federal court from enjoining the enforcement of certain Virginia statutes inhibiting advocacy of racial integration or civil rights by proscribing in broad terms, barratry, the practice of instigating litigation. Justice Douglas said:

> Virginia courts were not parties to the formulation of that legislative program. But they are interpreters of Virginia laws and bound to construe them, if possible, so that the legislative purpose is not frustrated. Where state laws make such an assault as these do on our decisions and a State has spoken defiantly against the constitutional rights of the citizens, reasons for showing deference to local institutions vanish. The conflict is plain and apparent; and the federal courts stand as the one authoritative body for enforcing the constitutional right of the citizens.

Id. at 182.

71. 407 U.S. 225 (1972). *See also* notes 25 & 40 and accompanying text *supra*.